

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MARIO JESUS DORAME,
Appellant.

No. 2 CA-CR 2019-0186
Filed July 31, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20175322001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
By Michael T. O'Toole, Chief Counsel, Phoenix
Counsel for Appellee

Law Offices of Stephanie K. Bond P.C., Tucson
By Stephanie K. Bond
Counsel for Appellant

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

BREARCLIFFE, Judge:

¶1 Mario Jesus Dorame appeals from his convictions after a jury trial for first-degree murder, unlawful imprisonment, abandonment or concealment of a dead body, and tampering with physical evidence. The trial court sentenced Dorame to natural life in prison for his murder conviction and imposed concurrent terms of imprisonment for the others. On appeal, Dorame contends that: (1) the court abused its discretion when it concluded that there was reasonable suspicion to stop and detain him; (2) the court abused its discretion when it admitted evidence regarding prior acts of domestic violence; and (3) the court erred in denying his motion to sever two of the counts. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the convictions. *State v. Robles*, 213 Ariz. 268, ¶ 2 (App. 2006). Dorame and the victim, M.E., began dating in 2016. They lived together for a couple of months in 2017, until M.E. moved in with her daughter, J.E., in April 2017.

¶3 After M.E. moved in with her, J.E. believed that Dorame was “out of [her] mother’s life”; M.E. had changed her phone number and blocked Dorame from her social media accounts. But on September 23, 2017, Dorame and M.E. were texting one another and made plans to meet at Dorame’s home later in the day. M.E. went to Dorame’s home around 7:00 p.m. Dorame and M.E. got “drunk,” consuming about six beers and at least six shots each. They then went to the casino, but later returned to Dorame’s home where they continued to drink. At some point M.E. and Dorame began to argue when M.E. told Dorame she intended to have sex with another man. M.E. then “came at [Dorame] with a . . . knife.” Dorame grabbed her wrist, they fell to the ground, and the knife fell out of M.E.’s hand. Dorame told her he was going to kill her, and said that if he “can’t have [her], nobody can have [her].” He then grabbed the knife, pinned M.E. down, and stabbed her to death.

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¶4 Dorame dragged M.E.'s body by the feet to his bedroom. He cleaned up M.E.'s blood with paper towels, a bucket, and a mop and then covered her body with blankets and towels. Days later, Dorame purchased bags of ice to put on M.E.'s body to slow decomposition.

¶5 The next day, Dorame cancelled plans with E.S., telling him he wasn't feeling well. Dorame also told E.S. that M.E. had been cheating on him and was still at his house. A few days later, Dorame texted E.S. that he had a cold, was "depressed because of [M.E.] and himself," and that he was going to take some time off work to "relax and just think."

¶6 Since September 26, J.E. had become increasingly worried about M.E. not calling her back and that M.E. was infrequently answering her text messages, and then, beginning on September 29, that she was not answering her texts at all. J.E. then contacted friends and family to see if they had heard from M.E., and on September 30, J.E. called her mother every hour on the hour. Once J.E. learned that M.E. had not been to work all week, she reported M.E. missing.

¶7 On October 1, J.E. and other family members obtained Dorame's home address and went there to find M.E. M.E.'s car, which E.S. had seen there as late as September 29, was no longer there. Dorame's roommate then let the family in to look for M.E. M.E.'s brother found M.E.'s body under a pile of blankets and trash bags in Dorame's room.

¶8 Detectives secured a search warrant and processed the scene. On a nightstand, investigators found a handwritten note stating:

I loved her, and we tried to work it out time after time. Always seemed to fail because of her kids and family. She was the most beautiful person in the world. She was scared of us getting back together because of her kids giving her conditions and—I can't tell what—ultimatums, possibly, of not letting her see her grandkids. We had an argument, and she told me she was going to sleep with another man after we went out and came home and slept together and were about to make up. I tried to convince her not to do it, but she kept insisting on doing it to get revenge on me. I could not handle having her sleep or love another man. I told her I love her and she said the same to me.

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I'm tired of trying to continue to fix this and her daughters [interfering] with us. She was crying, saying how she was tired of satisfying everyone, not able to live her own life, and that she wished we can [live] together for the rest of our lives. She said she loved all her kids and family, and wished I would never have gotten into the fight with her in April. We apologized and this is what we decided.

¶9 A warrant was issued for Dorame's arrest on October 2, 2017. Meanwhile, Dorame went "on the run" and hid in the basement of the hospital where he worked. As more fully described below, on November 15, the police located and arrested Dorame. Following his arrest, after being advised of his rights, Dorame spoke to detectives and confessed to killing M.E.

¶10 Dorame was charged with first-degree murder/domestic violence (count 1), kidnapping/domestic violence (count 2), abandonment/concealment of a dead body (count 3), and tampering with physical evidence (count 4). The jury acquitted Dorame of kidnapping/domestic violence and found him guilty of the lesser-included offense of unlawful imprisonment, as well as guilty of first-degree murder/domestic violence – with a unanimous finding of premeditation – abandonment/concealment of a dead body, and tampering with physical evidence. The trial court sentenced Dorame as described above. This appeal followed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Analysis

Reasonable Suspicion

¶11 Before trial, Dorame filed a motion to suppress all evidence derived from what he alleged was an illegal stop. On appeal, Dorame argues that the trial court abused its discretion when it denied that motion. We review the denial of a motion to suppress for an abuse of discretion, but review the trial court's legal conclusions *de novo*. *State v. Peterson*, 228 Ariz. 405, ¶ 6 (App. 2011). We defer to the court's determinations of the "credibility of the officers and the reasonableness of the inferences they drew." *State v. Mendoza-Ruiz*, 225 Ariz. 473, ¶ 6 (App. 2010).

¶12 Dorame claimed below, as he claims here, that the officers who actually stopped and then detained him had an insufficient basis to

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believe he was the subject of the arrest warrant. In its response to the motion to suppress, the state argued that the “collective knowledge” of the officers involved in the search for Dorame justified the stop and detention while police confirmed his identity.

Relevant Facts

¶13 “We consider only the evidence presented at the suppression hearing, and we view that evidence in the light most favorable to sustaining the [trial] court’s rulings.” *State v. Ontiveros-Loya*, 237 Ariz. 472, ¶ 5 (App. 2015). On November 15, 2019, Tucson Police Officers Jacob Smith and David Torres were on duty when Smith received a call from Detective Carlos Aguilar informing them that a U.S. Marshal’s Task Force was tracking Dorame through a cellphone signal and requested they respond to the area of the cellphone’s last known movement. Aguilar told Smith that the last known movement was in the area of Grant Road and Swan Road, and the signal had previously been tracked at Grant Road and Rosemont Boulevard, indicating that the phone was moving west. Smith explained that “due to the time elements of when they were getting signal changes our best guess was that the person was on foot walking” westbound.

¶14 Officer Smith testified that it was “dark out with street lights” and there were not a lot of people walking on the streets at that time. He further testified that they did not have a description of Dorame, “it was just the movement of the cellphone signal that they were tracking.” But he did know he was looking for a Hispanic male, and he recalled he had seen an email with a flier so he “went off of the photo that was in that flier, as well.” Smith testified that he looked at the flier after he received the call from Detective Aguilar but that “[i]t’s very common for people to change their appearance, so [he] just kind of took it as a decent representation of who [he] may encounter.”

¶15 Other surveillance units noted a person walking westbound on Grant Road and directed Officers Smith and Torres to a man who fit Dorame’s description. The officers were behind the man when they first saw him and watched him for approximately thirty seconds before they stopped him. To initiate the stop, Officer Smith pulled the marked police vehicle into a driveway, crossing the man’s path, got out of the car and ordered him to sit down. The officers handcuffed him “due to the nature of what was being investigated.” The officers then confirmed that the man stopped was Dorame, and that he was the one the U.S. Marshal’s Task Force sought. On cross-examination, Smith acknowledged that in a pretrial

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interview he did not mention the cellphone tracking or viewing the flier the day of the arrest.

¶16 Officer Torres testified that he did not recall having any physical descriptors of Dorame before stopping him and had not seen the flier. But he also stated that, when they located Dorame walking westbound on Grant, “[h]e was the only male in that immediate area.” He testified that when they stopped Dorame, there was a “reasonable expectation” that he was the one they were seeking because “they had obtained information from [the U.S. Marshals] that [Dorame] was possibly in that specific area and he was [the] only one walking in that specific area.”

¶17 The trial court denied Dorame’s motion to suppress, finding “that based on [the] collective knowledge of law enforcement there was reasonable suspicion to stop . . . Dorame.” The court found Officers Smith and Torres “to be very credible witnesses.” In denying the motion, the court stated that the information Smith had, by itself, provided reasonable suspicion to stop Dorame, but that the stop was based on “the collective knowledge of not only Officer Smith but the U.S. Marshals and Officer Torres.”

Analysis

¶18 Dorame contends that Officers Smith and Torres lacked reasonable suspicion, at the time they stopped and detained him, that he was the man wanted under the warrant; instead he claims their suspicion was “unreliable guesswork.” He claims the cellphone tracking information was insufficient and not the same as having a physical description of the person being sought and that “the electronic signal from a cellphone . . . could be speculated to be in a vehicle, tied to a dog, left on a bus or any number of places besides being carried by a man walking.” The state asserts that the collective knowledge of law enforcement officers and agencies involved, under the totality of the circumstances, was sufficient to support reasonable suspicion. We agree with the state.

¶19 “Police officers may briefly detain an individual who they have reasonable suspicion is involved in a crime.” *State v. Boteo-Flores*, 230 Ariz. 105, ¶ 11 (2012). “Reasonable suspicion that a person is wanted in connection with a completed felony also can justify a brief stop.” *State v. Kinney*, 225 Ariz. 550, ¶ 14 (App. 2010) (finding circumstances supported reasonable suspicion that defendant may have been suspect in a crime thus justifying investigatory stop to determine defendant’s identity). During an

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investigatory stop, officers may detain a suspect while the officers obtain more information about the reported crime. *Id.*

¶20 A showing of reasonable suspicion requires officers to articulate “a particularized and objective basis for suspecting that a person is engaged in criminal activity.” *State v. O’Meara*, 198 Ariz. 294, ¶ 7 (2000). Even when examining probable cause to make an arrest an officer need not “personally be in possession of all the facts” so long as the collective knowledge of all the officers is sufficient. *State v. Lawson*, 144 Ariz. 547, 553 (1985); *see also State v. Ramsey*, 223 Ariz. 480, ¶ 18 (App. 2010) (“The reasonable suspicion standard is a lower standard than that required for probable cause . . .”). “The totality of the circumstances, not each factor in isolation, determines whether reasonable suspicion exists.” *Boteo-Flores*, 230 Ariz. 105, ¶ 12.

¶21 Here, the totality of the circumstances was sufficient to give rise to a reasonable suspicion that the individual stopped was Dorame. The officers received information that a U.S. Marshal’s Task Force was tracking Dorame’s cellphone, the last known movement showed the cellphone at Grant Road and Swan Road heading westbound, and that its bearer was likely walking. When the officers arrived at that location, there was only one male walking in the immediate area. This tracking information, in light of the circumstances on the ground, was a sufficient “particularized and objective basis” to draw a reasonable inference that the man walking was Dorame and to stop him to determine his identity. Dorame emphasized below and here that the officers’ testimony conflicted as to any reliance on the flier. Nonetheless, the tracking information coupled with the circumstances at the time Dorame was spotted, provided reasonable suspicion even without any reliance on the flier. The trial court did not err in denying Dorame’s motion to suppress.

Other Acts Evidence

¶22 Before trial, the state moved to admit evidence of “previous quarrels and difficulties” between M.E. and Dorame under Rule 404(b), Ariz. R. Evid. – specifically, evidence of an April 2017 incident of domestic violence. Dorame requested the trial court deny the state’s motion because the evidence of the April incident had “no real connection to the events of September 24, 2017” and admitting the evidence would be “exceedingly dangerous to a fair determination of guilt and innocence.” The court ruled that the evidence of the April 2017 incident was admissible because it went to motive, intent, lack of mistake, rebutted impulsivity, and demonstrated

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premeditation. It further found that the “probative value . . . is not outweighed by the danger of unfair prejudice.” *See* Ariz. R. Evid. 403.

¶23 Dorame argues that the trial court abused its discretion when it admitted other-acts evidence of Dorame’s domestic violence against M.E. He claims this evidence was not admissible for any proper purpose and was more prejudicial than probative. We review a court’s rulings under Rule 403 and Rule 404(b) for abuse of discretion. *State v. Hardy*, 230 Ariz. 281, ¶ 35 (2012) (Rule 404(b)); *State v. Rivers*, 190 Ariz. 56, 60 (App. 1997) (Rule 403). The court was correct.

Relevant Facts

¶24 We view the facts, and all reasonable inferences therefrom, in the light most favorable to the trial court’s rulings. *State v. Ramsey*, 211 Ariz. 529, ¶ 2 (App. 2005). Evidence of the April 2017 incident was introduced at trial through J.E. and E.S. J.E. testified that, when M.E. moved in with her in April 2017, M.E.’s “whole face was bruised and swollen” and she had “a big welt on her head” and “welts all over her face.” E.S. testified that in April 2017 Dorame told him that “[M.E.] made him mad, and he struck her.” E.S. also testified that, after M.E. was killed, Dorame texted him that he “wish[ed] [he] could go back to April and start that day over. One bad day we had led to all of this.” The April incident was also mentioned in the note, introduced at trial, that the police officers found in Dorame’s bedroom, which stated, in part, “[s]he said she loved all her kids and family, and wished I would never have gotten into the fight with her in April.”

Analysis

¶25 Rule 404(b) precludes evidence of other crimes, wrongs, or acts (“other-acts evidence”) to prove a defendant’s character or “to show action in conformity therewith.” But otherwise, other-acts evidence is admissible if relevant for any other purpose, including but not limited to proving “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Ariz. R. Evid. 404(b). Such evidence is admissible unless barred by Rule 403 and is subject to the requirements of Rule 105, Ariz. R. Evid., for any requested limiting instruction. *State v. Ferrero*, 229 Ariz. 239, ¶ 12 (2012).

¶26 Our courts have “long held that where the evidence of premeditation is in issue, evidence of previous quarrels or difficulties between the accused and the victim is admissible.” *State v. Wood*, 180 Ariz. 53, 62 (1994) (quoting *State v. Jeffers*, 135 Ariz. 404, 418 (1983)). Such evidence may be relevant to show the malice, motive or premeditation of

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the defendant. *Id.*; see also *Hardy*, 230 Ariz. 281, ¶ 38 (“Evidence of prior argument with or violence toward a victim is likewise admissible to show motive or intent.”); *State v. Leteve*, 237 Ariz. 516, ¶ 16 (2015) (“[E]vidence of prior ill will or difficulties between a defendant and a murder victim may be relevant to show motive or premeditation.”). The state offered the evidence to show motive, intent, and premeditation and, consequently, as the trial court determined, the evidence of Dorame hitting M.E. in April 2017 is permissible under Rule 404(b).

¶27 Dorame claims, however, that it is “counterintuitive to assert, as the trial court did, that an example of a prior incident of impulsivity somehow ‘rebutts impulsivity.’” He claims that this prior instance of “acting out impulsively” actually demonstrates Dorame’s impulsivity character trait. Our supreme court in *Wood*, however, noted that the defendant’s prior physical abuse and threats against the victim rebutted a defense of impulsivity, and therefore, rebutted lack of premeditation. 180 Ariz. at 62. Here, Dorame’s prior abuse of M.E. tends to show that his violence against her was not an impulsive act. Even if, as Dorame asserts, his past impulsivity is consistent with current impulsivity, the evidence is nonetheless relevant to proving or disproving impulsivity. *See id.* (“In some cases, of course, such evidence [of previous quarrels or difficulties] may also show lack of premeditation. In either event, it is relevant.”).

¶28 Dorame further claims that there is no “logical nexus” between premeditated murder and hitting someone, and that the two acts are not “factually similar.” Even if that were so, other acts or crimes need only be similar if similarity is the basis for relevancy – otherwise relevant evidence need not be excluded because it is not similar. *State v. Gulbrandson*, 184 Ariz. 46, 61 (1995). The April 2017 incident was not admitted because it was factually similar to the charged offense, but rather, as noted above, because it tended to show Dorame’s motive, intent, and premeditation.

¶29 Dorame argues, nonetheless, that the trial court should have excluded evidence of the April 2017 incident because it was unfairly prejudicial and “permitted the jury to convict him based on a negative emotional reaction to the prior bad acts or to punish him for the prior bad acts.” “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” Ariz. R. Evid. 403. “Unfair prejudice means an undue tendency to suggest decision on an improper basis . . . such as emotion, sympathy or horror.” *State v. Schurz*, 176 Ariz. 46, 52 (1993) (internal quotation marks omitted). Premeditation was a contested issue at trial, and thus the probative value of this evidence, which bore on premeditation, was significant. The court

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did not abuse its discretion when it found that the probative value of the evidence of Dorame hitting M.E. was not outweighed by unfair prejudice. Even so, the court instructed the jury that it must not consider this evidence for an improper purpose and “must not consider this act to determine the defendant’s character or character trait or to determine that the defendant acted in conformity with the defendant’s character or character trait and therefore, committed the charged offense.” “We presume that jurors follow[] the court’s instructions.” *State v. Newell*, 212 Ariz. 389, ¶ 68 (2006). The trial court did not abuse its discretion in admitting this other-acts evidence of domestic violence.

Severance

¶30 Lastly, Dorame argues that the trial court erred in denying his motion to sever counts three (abandonment/concealment of a dead body) and four (tampering with physical evidence) from the first-degree murder and kidnapping counts. Prior to trial, Dorame moved to sever these counts but did not renew his motion at or before the close of evidence. “The right to severance is waived if the defendant fails to timely file and renew a proper motion for severance.” Ariz. R. Crim. P. 13.4(c). When, as here, the defendant fails to renew the motion at or before the close of evidence, we review only for fundamental error. *State v. Goudeau*, 239 Ariz. 421, ¶ 54 (2016). Dorame does not, however, argue on appeal that the alleged error was fundamental, and thus, this argument is waived. *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008).

Disposition

¶31 For the foregoing reasons, we affirm Dorame’s convictions and sentences.